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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PATEL, TAJASH D

ART UNIT PAPER NUMBER

3765

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/684,494

Applicant(s)

LEMIRE, LAURA

Examiner

Tejash D. Patel

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/17/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 5 is objected to because of the following informalities: In claim 5, on line 1, "a r fastener" should be changed to -- a fastener--. Correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8, and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrity (US 6,438,761) in view of Babay (US 6,435,194). McGarrity discloses a protective breathable guard, col. 2, line 67 that includes a first, freely positioned pad (14) being enclosed by a pad cover which has first and second cover pieces as shown in figures 2 and 3. Further, a sleeve portion having first and second sleeve portions (24, 26) is attached to the pad cover as shown in figure 2. Also, the pad cover forms an opening (46) that can have hook and loop fastener, col. 4,

lines 39-41. In addition, the sleeve includes two straps having hook and loop portions as shown in figure 3.

However, McGarity does not show the guard being reversible by having the first cover piece and first sleeve being made of a first color and the second cover piece and second sleeve being made of a second color that is different from the first color.

Babay discloses a reversible guard with an elastic band (3) having the first cover piece and first sleeve being made of a first color and the second cover piece and second sleeve being made of a second color that is different from the first color, col. 1, line 60 – col. 2, line 30 and as shown in figure 3.

It would have been obvious to one skilled in the art at the time the invention was made to provide the guard of McGarity with the first cover piece and first sleeve being made of a first color and the second cover piece and second sleeve being made of a second color that is different from the first color as taught by Babay so that the device can be reversibly and comfortably worn or as required for a particular application thereof.

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4. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrity in view of Babay as applied to claim 1 above, and further in view of Stafford et al. (US 5,395,400). McGarrity discloses the invention as set forth above except for showing a second pad being positioned below the first pad.

Stafford et al. discloses a protective guard having a second pad being positioned below a first pad as shown in figure 2.

It would have been obvious to one skilled in the art at the time the invention was made to provide the protective guard of McGarrity when viewed with Babay having a second pad being positioned below a first pad as taught by Stafford et al in order to provide additional protection from force of impact.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Futere et al. in view of McGarrity and Babay. Futere et al discloses a protective guard having a sleeve with a pad therein with a stirrup as shown in figures 1 and 2. Futere et al. discloses the invention as set forth above except for showing a first cover piece and first sleeve being made of a first color and the second cover piece and second sleeve being made of a second color that is different from the first color and having a removable pad through an opening.

McGarrity and Babay discloses the invention as set forth above in paragraph 3 above.

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It would have been obvious to one skilled in the art at the time the invention was made to provide the protective guard of Futere et al. with a first cover piece and first sleeve being made of a first color and the second cover piece and second sleeve being made of a second color that is different from the first color and having a removable pad through an opening as taught by McGarrity and Babay , in order to allow the device to be reversible worn about the body or as required for a particular application thereof.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993.

July 6, 2005


TEJASH PATEL
PRIMARY EXAMINER